

## **PLANNING CODE OF CONDUCT**

### **1. Introduction**

- 1.1 Decisions on plan making and planning applications must be undertaken, on behalf of communities, in a fair, impartial and transparent way. This Code of Conduct has been written for officers and councillors involved in making planning decisions.
- 1.2 This Planning Code of Conduct is supplemental to the Council's Constitution, the Member's Code of Conduct and the Employee's Code of Conduct, should be read in conjunction with those documents and where there is any conflict or inconsistency then those documents shall prevail.
- 1.3 Officers who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. The RTPI provides advice for planning professionals on matters of probity aimed at supporting planners in exercising their independent professional judgement, and promoting public confidence in the planning system.
- 1.4 Officers and (save insofar as their involvement is purely on the basis of their employment, trade, profession or vocation) councillors must not act as agents for people pursuing planning matters within their authority, even if they are not involved in the decision making on them. In addition, officers must always act impartially and in a politically neutral manner.

### **2. Interests**

- 2.1 Councillors should refer to the Member's Code of Conduct for the detail of the requirements for registering and declaring interests.
- 2.2 It is important for councillors to identify a potential interest in a planning decision early on and raise this with the Monitoring Officer as soon as possible. Advice should always be sought from the Council's Monitoring Officer where there is any uncertainty over what action the Councillor should take in compliance with the Member's Code of Conduct. Ultimately, responsibility for fulfilling the requirements rests with each councillor.
- 2.3 The provisions of the Localism Act 2011 (as amended) seek to separate interests arising from the personal and private interests of the councillor from those arising from the councillor's wider public life. Councillors should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the councillor's involvement would be appropriate or not.

### **3. Pre-disposition, Pre-determination and bias**

- 3.1 Members of a planning committee, local plan steering group or full council (when the local plan is being considered) need to avoid any appearance of bias or having 'predetermined' views when making a decision on a planning application or policy.

- 3.2 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is indicative of a 'closed mind' approach and may leave the grant of planning permission vulnerable to challenge by Judicial Review.
- 3.3 Predisposition is where a councillor may have a pre-existing opinion or attitude about the matter under discussion, but remains open to listening to all the arguments and changing their mind in light of the information presented at the meeting. Section 25 of the Localism Act 2011 (as amended) clarifies that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicates what view they might take in relation to any particular matter.
- 3.4 A councillor in the position as outlined in paragraph 3.3 above will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the councillor was biased.
- 3.5 Planning issues must be assessed fairly and on their planning merits, even when there is a predisposition in favour of one side of the argument or the other. Avoiding predetermination and the impression of it is essential. The decision making process must be seen to be fair and impartial from the perspective of an external observer. Particular care must be taken when using social media (e.g. a councillor who posts: "Wind farms are blots on the landscape and I will oppose each and every wind farm application that comes before the committee" will be perceived very differently from a councillor who posts: "Many people find wind farms ugly and noisy and I will need a lot of persuading that any more wind farms should be allowed in our area").
- 3.6 If a decision maker (which, for the avoidance of doubt, may be an officer or a councillor as applicable) has predetermined their position, they should withdraw from being a member of the decision making body for that matter. This applies to any member of the planning committee who wants to speak for or against a proposal as a campaigner (for example on a proposal within their ward).
- 3.7 The leader of the Council and relevant lead member for the Council's planning service play an important role driving planning policies and proposals so (subject to paragraph 3.8 below) should normally exclude themselves from the Council's Planning Committee. This is to avoid the perception of a conflict of interests and predisposition.
- 3.8 Where a member who is a relevant lead member for the Council's planning service is to be involved in the Council's Planning Committee they will need to withdraw when the committee is considering the Council's own schemes or other applications that they have been seen to support previously.

#### **4. Development proposals**

4.1 Planning applications or proposals for changes to a local plan submitted by serving and former councillors, officers and their close associates and relatives can give rise to suspicions of impropriety. Such proposals must, subject to paragraph 4.2 below, be handled consistently with any other planning applications and not treated in such a way as to give grounds for accusations of favouritism.

4.2 In relation to proposals submitted by serving councillors or planning officers (or their respective partners):

- (a) if they submit:
  - (i) their own proposal; or
  - (ii) (in the case of a councillor or their partner only) a proposal on behalf of another acting pursuant to their employment, trade, profession or vocation (or have otherwise been formally contracted in connection with such proposal);to the Council they should play no part in its consideration;
- (b) a system should be devised to identify and manage such proposals and ensure probity in decision making; and
- (c) the Monitoring Officer should be informed of such proposals.

4.3 A councillor would undoubtedly have a disclosable pecuniary interest in their own or their partner's application and should not participate in its consideration. They have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as an applicant, should also not seek to influence the decision improperly.

4.4 Proposals for the Council's own development should be treated with the same transparency and impartiality as those of private developers.

#### **5. Lobbying of and by councillors**

5.1 Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee. Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, and so care and common sense must be exercised by all parties involved.

5.2 In line with paragraph 3 on pre-determination above, when being lobbied:

- (a) councillors should try to take care expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have considered all the application materials and arguments for and against the development proposal; and
- (b) a councillor should restrict themselves to giving advice about the process and what can and can't be taken into account. Councillors can raise issues which have been raised by their constituents with officers. If councillors do express an opinion to objectors or supporters, it is good practice that they make it clear that they will only be in a position to take a final decision after they have heard all

the relevant arguments, and have taken into account all relevant material and planning considerations at committee

- 5.3 If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision making committee, they should withdraw from the meeting once any public or ward member speaking opportunities have been completed. This is to counter any suggestion that members of the committee may have been influenced by their continuing presence.
- 5.4 Lobbying can take many forms and where there are concerns, advice should immediately be sought from the Monitoring Officer, although it must be reiterated that compliance with this paragraph 5 is ultimately the responsibility of the individual councillor.
- 5.5 Planning decisions cannot be made on a party political basis in response to lobbying - the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration
- 5.6 Planning committee or local plan steering group members should in general avoid organising support for or against a planning application, and avoid lobbying other councillors
- 5.7 Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.
- 5.8 Where a councillor seeks to require a proposal that would normally be determined under the delegated authority of an officer to be called in for determination by the planning committee, the reasons for call-in must be recorded in writing and refer solely to matters of material planning concern.
- 5.9 Councillors and officers should be cautious about accepting gifts and hospitality in general and especially where offered by lobbyists. It is not enough to register such gifts. Any councillor or officer receiving offers over £50 should let the council's monitoring officer know, in writing, and seek advice as to whether they should be accepted or declined, such consideration being based on the purpose of the hospitality, proportionality and the avoidance of any conflict of interest.

## **6. Discussions before a decision is taken**

- 6.1 Pre-application discussions between a potential applicant and the Council can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant.
- 6.2 Section 25 of the Localism Act 2011, which establishes prior indications of view of a matter not to amount to predetermination, has given councillors much more freedom to engage in pre-application discussions.

Nevertheless, in order to avoid the perception that councillors might have fettered their discretion, such discussions should ensure:

- (a) Clarity at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- (b) Consistent advice is given by officers based upon the development plan and material planning considerations.
- (c) That councillors avoid giving separate advice on the development plan or other material planning considerations, as they may not be aware of all the issues at an early stage. Councillors should not become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the Council's position is co-ordinated.
- (d) A commitment is made that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.

6.3 Officers should arrange any meetings where discussions as envisaged by paragraph 6.2 may take place, attend these with councillors and make a written record of the meeting placing this note on the case file. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.

6.4 Councillors also talk regularly to constituents to gauge their views on matters of local concern – which can include planning applications. Where it is apparent that such discussions may engage paragraph 6.2 above and an officer is not present then such discussions should be registered by the councillor with the planning officer and notes written to evidence compliance with paragraph 6.2.

## **7. Officer reports**

- 7.1 Officer reports on planning applications must have regard to the following:
- (a) Reports should be accurate and should include the substance of any objections and other responses received to the consultation.
  - (b) Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the NPPF, any local finance considerations, and any other material planning considerations.
  - (c) Reports should have a written recommendation for a decision to be made.
  - (d) Reports should contain, where relevant, technical appraisals which clearly justify the recommendation.

- (e) If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated.
- (f) Where an application is being taken to Committee which might otherwise have been decided under delegated officer powers in accordance with paragraph 5.25 of Annexe 2 to Part 3 of the Constitution (including applications covered by paragraph 4 above) this should be highlighted.
- (g) Any oral updates or changes to the report should be recorded.

7.2 Appropriate interventions by the legal officer at the committee meeting itself might be needed in order to correct any misconceptions on specific issues raised in an officer report.

## **8. Public speaking at Planning Committees**

8.1 Clear protocols as provided by 8.2 below should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors.

8.2 In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the local planning authority in writing.

8.3 New documents should not be circulated to the committee as councillors may not be able to give proper consideration to the new information, and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. Late information might lead to a deferral. This should be made clear to those who intend to speak.

8.4 Messages should never be passed to individual committee members, either from other councillors or from the public. This could be seen as seeking to influence that member improperly and will create a perception of bias that will be difficult to overcome.

## **9. Decisions which differ from an officer recommendation and 'departures'**

9.1 The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (Section 38A of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990). This applies to all planning decisions.

9.2 Any reasons for refusal must be justified against the development plan and other material considerations. The committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other non material considerations which might cause local controversy, will rarely satisfy the relevant tests.

- 9.3 If a councillor is concerned about an officer's recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting. Care should be taken, however, to ensure that this does not lead to predetermination of a decision.
- 9.4 The detailed reasons as to why the planning committee should differ from an officer recommendation must be recorded as part of the mover's motion.
- 9.5 The committee meeting should be adjourned for a few minutes for those reasons to be discussed and then agreed by the committee.
- 9.6 Where there is concern about the validity of reasons, consideration should be given to deferring to another meeting to have the reasons tested and discussed.
- 9.7 If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or section 106 planning obligations):
- (a) A detailed minute of the committee's reasons should be made and a copy placed on the application file.
  - (b) Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation, which should be set in the context of the development plan or the NPPF.
  - (c) The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome based on policies set out in the development plan and the NPPF, and chances of a successful award of costs against the local authority, should one be made
- 9.8 All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departures' from the development plan. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated.

## **10. Committee site visits**

- 10.1 The Member's Code of Conduct applies to site visits and the Council must adopt a clear and consistent approach on when and why to hold a site visit and how to conduct it as follows:
- (a) Site visits should only be used where the benefit is clear and substantial in light of (e) below. Officers will have visited the site and assessed the scheme against policies and material considerations already
  - (b) The purpose, format and conduct should be clear at the outset and adhered to throughout the visit
  - (c) Where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test (at (a) above) should still apply

- (d) A record should be kept of the reasons why a site visit is called, this includes where the planning committee defer consideration of an application for a site inspection.
  - (e) A site visit is only likely to be necessary if:
    - (i) the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers;
    - (ii) the comments of the applicant and objectors cannot be expressed adequately in writing; and/or
    - (iii) the proposal is particularly contentious.
- 10.2 Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.
- 10.3 Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.

## **11. Training**

- 11.1 Councillors must undertake training on planning organised by the Council when first appointed to the planning committee or any local plan steering group.
- 11.2 Councillors shall attend regular ongoing training on decision making, the Member's Code of Conduct as well as on planning matters.
- 11.3 Failure to attend the above mandatory training will result in the councillor not being able to sit on planning committee or take part in decision making.

## **12. Reviewing past planning decisions and the outcomes**

- 12.1 The Planning Committee shall visit a sample of implemented planning permissions, to assess the quality of the decisions and the development, on an annual or more frequent basis to improve the quality and consistency of decision making, strengthen public confidence in the planning system, and help with reviews of planning policy.
- 12.2 Reviews should include visits to a range of developments such as major and minor schemes, upheld appeals, listed building works and enforcement cases. Briefing notes should be prepared on each case. The planning committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

## **13. Complaints and record keeping**

- 13.1 Where a complaint is raised pursuant to this Planning Code of Conduct then it shall be dealt with as follows:
  - (a) By the Service Manager (Development Management) insofar as it relates to a decision taken by the local planning authority or the operation of the planning service.



- (b) By the Monitoring Officer insofar as it relates to the Member's Code of Conduct as supplemented by this Planning Code of Conduct or decisions are considered to have been made unlawfully or otherwise in contravention of the Council's Constitution including as provided by paragraph 4.2 above.
  - (c) By the Council's Feedback team if a general complaint is to be raised in relation to an apparent failure to comply with this Planning Code of Conduct or a matter is considered to have not been dealt with appropriately.
- 13.2 Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. This applies to decisions taken by committee and under delegated powers, and to applications, enforcement and development plan matters.